

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
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Attorney for the State Board
of Medical Examiners

FILED

August 11, 2003

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF **THE LICENSE OF**

JOHN F. CAREY, M.D.
License No. MA65417

Administrative Action

FINAL ORDER OF DISCIPLINE

TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, **John F. Carey, M.D.**, License **No.** MA65417, is a physician **licensed** in the State of New Jersey and has been a licensee **at** all times relevant hereto. Respondent's **license** is currently active.

2. On February 17, 1999, Respondent **entered** into a **Consent Agreement and Order** ("Order"), which included as Exhibits A and B **an Amended Statement of Charges and Terms of Probation**, with the

New York State Board for Professional Medical Conduct ("New York Board"). A copy of the Order and exhibits are attached to this Order as Exhibit A. The Amended Statement of Charges attached to the New York Order set forth factual allegations on behalf of five patients of misconduct by Respondent including, but not limited to: inappropriate touching of a 14 year old female patient; failure to adequately evaluate; failure to make or record a differential diagnosis and/or develop a follow-up plan; and failure to maintain a medical record which accurately reflected the evaluation and/or treatment of a patient. Ultimately, Respondent consented to enter a plea of "no contest" to two factual allegations, one of which was that he failed to maintain a medical record which accurately reflected the evaluation and/or treatment of a patient he treated from approximately April 11, 1990 through May 15, 1992, and the other which was that he failed to maintain a record which accurately reflected the evaluation of another patient he treated from December 18, 1992 through January 5, 1993.

3. As a result of the foregoing, the Order provided that Respondent was subject to a five year probation which included, among other terms, that Respondent practice only when monitored by a licensed physician and that a female chaperon must be present when Respondent examines and/or treats any female patient. Further, the female chaperon must be a licensed or registered health care professional or other health care worker and cannot be

a family member, personal friend or be in a **professional relationship** with Respondent which could pose a conflict with the chaperon's responsibilities. The chaperon must provide quarterly reports and logs; report any failure **by Respondent** within 24 hours to comply with the Order, including any sexual actions or **inappropriate** comments to a **patient**; and must confirm in writing her presence via logs during each examination of a **female patient**. Further, the Order provided that a **permanent** limitation be **placed** on **Respondent's** **medical** license that his **medical** practice, **except** under certain limited circumstances, is limited to his registered address and to hospitals where Respondent holds medical privileges.

CONCLUSIONS OF LAW

1. The above action provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey in that it is based on admissions **that would** give rise **to discipline** in this State for misconduct pursuant to N.J.S.A. 45:1-21(h) and N.J.A.C. 13:35-6.5 since Respondent has failed to maintain proper medical records.

DISCUSSION

Based on the foregoing **findings and** conclusions, a **Provisional** Order of Discipline ("POD") suspending Respondent's license to practice medicine and surgery **in the** State of **New Jersey** was entered on August 24, 2001 and a copy was forwarded to **Respondent's** last known address on file with **the Board**. The Provisional Order

was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request setting forth in writing any and all reasons why said findings or conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

Respondent responded that the POD should not be finalized because the Board failed to take into consideration any mitigating circumstances. However, Respondent failed to present any mitigating evidence after the Board had given him ample opportunity to do so. Respondent further stated that the Board has failed to "prevent inflammatory and prejudicial allegations from unfairly and adversely affecting its provisional decision." Respondent did not cite to any specific provisions to support his contention, but rather made a blanket statement. Respondent's submissions were reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies had been raised by the Respondent. The Board was not persuaded that the submitted materials merited further consideration, as Respondent did not dispute the Findings of Fact and Conclusions of Law.

This matter was further reviewed by the Board when it was revealed that the sanction set forth in the POD proposed an indefinite suspension of Respondent's New Jersey license. On June 11, 2003 the Board determined to file a Final Order of Discipline ("FOD") and amend the penalty in response to the submission to the POD. The Board approved the issuance of an FOD that modifies the POD and mirrors the sanctions imposed by the New York Board, and such sanctions shall be retroactive to and concurrent with the period of probation imposed by the New York Board.

ACCORDINGLY, IT IS on this 6th day of August, 2003, ORDERED that:

1. Respondent's license to practice medicine and surgery in the State of New Jersey be and hereby is placed on probation for a period of five (5) years, such period of probation shall be concurrent with the five (5) year period of probation ordered by the New York State, Department of Health, State Board for Professional Medical Conduct.

2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate fitness to resume practice, and satisfaction of all probationary terms and conditions set forth in the New York Orders. Any practice in this State prior to said appearance and reinstatement by the Board shall constitute grounds for a charge of unlicensed practice. In addition, the Board



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

STATE BOARD OF MEDICAL EXAMINERS

140 EAST FRONT STREET, 2ND FLOOR, TRENTON NJ

JOHN J. FARMER, JR.

Attorney General

MARK S. HERR

Director

Mailing Address

P.O. Box 183

Trenton, NJ 08625

(609) 826-7100

August 24, 2001

REGULAR MAIL AND
CERTIFIED RETURN RECEIPT

John F. Carey, M.D.
1 Hatfield Lane
Goshen, NY 10924-6712

Dear Dr. Carey:

Enclosed **find** a certified **true** copy of the Administrative Action PROVISIONAL ORDER OF DISCIPLINE filed August 24, 2001 with the New Jersey Board of Medical Examiners.

Your receipt acts as service of this document. Please note, you have thirty days in which to submit a **written** request for modification or dismissal of the Findings of Fact contained in the Provisional Order. Should *you* have any questions, please contact Deputy Attorney General B. Michelle Albertson at the address and/or telephone number listed on the Provisional Order.

Very truly yours,

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

Carolyn Maschal

Assistant Executive Director

Enclosure

cc. B. Michelle Albertson. **D.A.G.**

FILED

JOHN J. FARMER, JR.
ATTORNEY GENERAL OF NEW JERSEY
Division of Law 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the State Board
of Medical Examiners

August 24, 2001

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: B. Michelle Albertson
Deputy Attorney General
Tel. (973) 648-7297

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

JOHN F. CAREY, M.D.
License No. MA 65417

PROVISIONAL ORDER
OF DISCIPLINE

TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, John F. Carey, License No. MA 65417, is a physician licensed in the State of New Jersey and has been a licensee at all times relevant hereto. Respondent's license is currently active.

CERTIFIED TRUE COPY

2. On February 17, 1999 Respondent entered into a Consent Agreement and Order ("Order"), which included as Exhibits A and B an Amended Statement of Charges and Terms of Probation, with the New York State Board for Professional Medical Conduct. A copy of the Order and exhibits are attached to this Order as Exhibit A. The Amended Statement of Charges attached to the New York Order set forth factual allegations on behalf of five patients of misconduct by Respondent including, but not limited to: inappropriate touching of a 14 year old female patient; failure to adequately evaluate; failure to make or record a differential diagnosis and/or develop a follow-up plan; and failure to maintain a medical record which accurately reflected the evaluation and/or treatment of a patient. Ultimately, Respondent consented to enter a plea of "no contest" to two factual allegations, one of which was that he failed to maintain a medical record which accurately reflected the evaluation and/or treatment of a patient he treated from approximately April 11, 1990 through May 15, 1992, and the other which was that he failed to maintain a record which accurately reflected the evaluation of another patient he treated from December 8, 1992 through January 5, 1993.

3. As a result of the foregoing, the Order provided that Respondent was subject to a five year probation which included, among other terms, that Respondent practice only when monitored by a licensed physician and that a female chaperon must be present when Respondent examines and/or treats any female patient. Further, the female chaperon must be a licensed or registered

health care professional or other health care worker and cannot be a family member, personal friend or be in a professional relationship with Respondent which could pose a conflict with the chaperon's responsibilities. The chaperon must provide quarterly reports and logs; report any failure by Respondent within 24 hours to comply with the Order, including any sexual actions or inappropriate comments to a patient; and must confirm in writing her presence via logs during each examination of a female patient. Further, the Order provided that a permanent limitation be placed on Respondent's medical license that his medical practice, except under certain limited circumstances, is limited to his registered address and to hospitals where Respondent holds medical privileges

CONCLUSIONS OF LAW

1. The above action provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey in that it is based on admissions that would give rise to discipline in this State for misconduct pursuant to N.J.S.A. 45:1-21(h) and N.J.A.C. 13:35-6.5 since Respondent has failed to maintain proper medical records.

ACCORDINGLY, IT IS on this 24th day of August
2001. ORDERED that:

1. Respondent's license to practice medicine in the State of New Jersey be and hereby is suspended such time as he can demonstrate that he holds an unrestricted license in New York.

2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a

committee thereof) to demonstrate fitness to resume practice, and any practice in this State prior to said appearance shall constitute grounds for the a charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on Respondent's practice should his license be reinstated.

3. The within Order shall be subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry hereof unless Respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

a) Submitting a written request for modification or dismissal to William Roeder, Executive Director, State Board of Medical Examiners, PO Box 183, Trenton, New Jersey 08625-0183

b) Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed

c) Submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor or offered in mitigation of penalty.

4. Any submissions will be reviewed by the Board, and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through a supplemental submission during the thirty-day period, or if the Board is not persuaded that submitted materials merit further consideration, a Final Order of Discipline will be entered

5. In the event that Respondent's submissions establish a need for further proceedings, including, but not limited to, an evidentiary hearing, Respondent shall be notified with regard

thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein shall serve as notice of the factual and legal allegations in such proceeding.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By:

William V. Harrer M.D.

William V. Harrer, M.D., B.L.D.
Board President

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

CONSENT

IN THE MATTER

AGREEMENT

OF

AND

JOHN F. CAREY, M.D.

ORDER

BPMC #99-45

STATE OF NEW YORK)
COUNTY OF ORANGE) ss.:

JOHN F. CAREY, M.D., (Respondent) being **duly** sworn, deposes and says:

That on or about July 1, 1978, I was licensed to practice as a physician in the *State of New York*, having been issued License No. 134672 by the New York State Education Department.

My current address is 1 Hatfield Lane, Goshen, **New York**, and I will **advise** the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with five specifications of professional misconduct.

A copy of the Amended *Statement of Charges* is annexed hereto, made a part hereof, **and** marked as Exhibit "A".

I plead no contest to paragraphs 0.2 and E.3 of the third specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

1. Five years probation in accordance with the terms set forth in *Exhibit B* hereto.
2. A permanent limitation on my medical license that except in emergencies or where previously authorized in writing by the Director of OPMC, my **medical** practice shall be limited to my registered address and to hospitals in which I may now or in the future hold medical privileges.

EXHIBIT A

shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1999).

I agree that in *the* event I am charged with professional misconduct ~~in~~ the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it **be** granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall *not* be used against me in any way **and** shall be kept in strict confidence during the pendency ~~of~~ the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination **by** the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance **by** the Board, which may be accomplished by mailing, **by** first **class** mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via *facsimile* to me or my attorney, whichever *is* earliest.

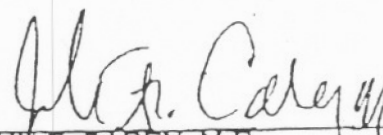
I am making this Application of my own free will **and** accord and not under duress, compulsion or restraint of any kind or manner. ~~In~~ consideration of the value *to* me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have *to* contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the

Application **be granted.**

AFFIRMED:

DATED

2/17/99


JOHN F. CAREY, M.D.
RESPONDENT

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE:

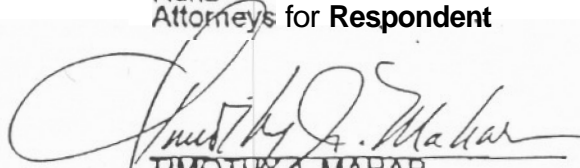
2/17/74



CHRISTOPHER MASSARO, J. Esq.
of Counsel to De Graff, Foy, Holt-Harris &
Kunz
Attorneys for Respondent

DATE:

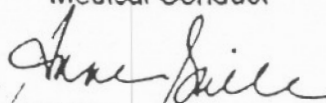
2/17/99



TIMOTHY J. MAHAR
Associate Counsel
Bureau of Professional
Medical Conduct

DATE:

2/19/99



ANNE E. KANE
Director/
Office of Professional
Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
JOHN F. CAREY, M.D.

CONSENT
ORDER


Upon the proposed agreement of John F. Carey, M.D. (Respondent) for Consent Order, which application ~~is~~ made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever ~~is~~ earliest.

SO ORDERED.

DATED: 2/23/99


WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
: AMENDED

IN THE MATTER : STATEMENT
OF OF
JOHN F. CAREY, M.D. : CHARGES

-----X

John F. Carey, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1978, by the issuance of license number 134672 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A, a female patient then 14 years old, on September 23, 1997 at his office, which, on information and belief, was then located at 1 Hatfield Lane, Goshen, New York.

1. Respondent inappropriately touched Patient A's breast over a bra without a medical justification.
2. Respondent uncovered and exposed Patient A's breast without a medical justification.
3. Respondent failed to maintain a medical record which accurately reflected the evaluation of Patient A on

September 23, 1997.

E. On or about April 25, 1993, Patient B was admitted to the Arden Hill Hospital by Respondent: from the hospital's emergency room to rule out a myocardial infarction. Patient B died the following morning without having been evaluated by Respondent or the surgical consultant who had been called with respect to the patient's severe abdominal pain. Respondent's care medical care in the following respects:

1. Respondent failed to adequately evaluate Patient B.

C. From approximately September 13, 1983 through November 14, 1993, Respondent provided medical care to Patient C at his Harriman Drive office and at the Arden Will Hospital for hypertension, among other conditions. Respondent's medical care of Patient C deviated from accepted standards of medical care in the following respects:

1. Respondent failed to develop a follow-up plan in response to the results of the Holter Monitor study of Patient C performed on October 22, 1990.
2. Respondent failed to further evaluate abnormal glucose levels for Patient C recorded in May, 1992.
3. Respondent failed on various occasions to adequately

evaluate Patient C by history and/or physical examination and/or maintain a record which accurately reflected the evaluation of Patient C.

D. From approximately April 11, 1990 through May 15, 1992, Respondent treated Patient D at his Harriman Drive office and the Arden Hill Hospital for an intestinal obstruction, among other conditions. Respondent's medical care of Patient D deviated from accepted standards of medical care in the following respects.

1. Respondent failed to adequately evaluate Patient D on October 8, 1991 by history and/or physical examination for a recorded complaint of a "knot" in the stomach.
2. Respondent failed to maintain a medical record which accurately reflected the evaluation and/or treatment of Patient D.

E. From approximately December 8, 1992 through January 5, 1993, Respondent provided medical care to Patient E at his Harriman Drive office and the Arden Hill Hospital for abdominal pain, among other conditions. Respondent's medical care of Patient E deviated from accepted standards of medical care in the following respects:

1. Respondent on December 8, 1992 failed to adequately evaluate by history and/or physical examination

SECOND SPECIFICATION

MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(20) by reason of his having engaged in conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that: Petitioner charges:

2. The facts in Paragraphs A and A.1 and/or A and A.2.

THIRD SPECIFICATION

Negligence On More Than One Occasion

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530 (3) by reason of his practicing the profession of medicine with negligence on more than one occasion in that Petitioner charges that Respondent committed two or more of the following:

3. The facts in Paragraphs A and A.1, and/or A and A.2, and/or A and A.3, and/or B and B.1, and/or C and C.1, and/or C and C.2, and/or C and C.3, and/or D and D.1 and/or D and D.2, and/or, E and E.1 and/or E and E.2, and/or E and E.3.